

STATE OF MICHIGAN
COURT OF APPEALS

In re G E COPELAND, Minor.

UNPUBLISHED
January 21, 2016

No. 327493
Wayne Circuit Court
Family Division
LC No. 14-518096-NA

In re D D McMILLON, Minor.

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Before: RIORDAN, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

In these consolidated appeals, respondent father appeals as of right orders terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

This matter stemmed from the August 2014 death of the 16-month-old child of respondent's girlfriend. The child suffered multiple injuries while in respondent's care, and her death was ruled a homicide. Respondent claimed that the child's injuries occurred while he was performing CPR after he observed the child choking; he denied intentionally harming the child. A petition was filed to terminate respondent's parental rights to the two children, who had different mothers and were about the same age. After a trial, the court terminated respondent's parental rights, and respondent appeals.

Respondent first argues the trial court erred in terminating his parental rights because there was not clear and convincing evidence of at least one statutory ground for termination. We disagree. In relation to this argument, respondent also claims that the trial court's decision was based on inadmissible and irrelevant testimony of his history of domestic violence and that the court erred in amending the petition mid-trial to include these allegations.

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “We review for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *Id.*; see also MCR 3.977(K). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re Moss*, 301 Mich App at 80. “We review for an abuse of discretion a trial court’s decision regarding the admission of evidence.” *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). The trial court’s decision on a motion to amend is also reviewed for an abuse of discretion. See *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001). A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes. *In re Utrera*, 281 Mich App at 15.

In October 2014, petitions were filed seeking court jurisdiction over respondent’s two children pursuant to MCL 712A.2(b), as well as termination of his parental rights pursuant to MCL 712A.19b(3)(g) and (j). The petition was based on the circumstances surrounding the death of respondent’s girlfriend’s child, as well as respondent’s criminal history. A trial was held from November 2014 until March 2015. At a February 2015 hearing, petitioner presented evidence that respondent committed domestic violence against the mother of one of the minor children. Defendant claims this evidence was irrelevant and unduly prejudicial. Despite defendant’s claims, we conclude that the evidence was relevant to jurisdiction and the statutory grounds for termination. Jurisdiction is established pursuant to MCL 712A.2(b) where a parent subjects a child to a substantial risk of harm to the child’s mental well-being. Respondent’s history of domestic violence, several instances of which occurred in the presence of minor children, presented a substantial risk of harm to his children’s mental well-being. Respondent’s history of domestic violence was also indicative of respondent’s inability to provide proper care or custody and the future likelihood of harm to the minor children. Accordingly, the evidence was relevant.

Additionally, we disagree with defendant that this evidence was unduly prejudicial pursuant to MRE 403. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403. Here, the evidence was highly probative of whether respondent posed a risk to his children and respondent has not established that the trial court’s decision to admit the evidence was outside the range of reasonable and principled outcomes. *In re Utrera*, 281 Mich App at 15.

We also reject respondent’s contention that the trial court abused its discretion in allowing amendment of the petitions to include the allegations of domestic violence. MCL 712A.11(6) permits amendment of a petition “at any stage of the proceedings as the ends of justice require.” Because the allegations of respondent’s domestic violence related to the issues before the court, amending the petition to include them served the ends of justice. Moreover, although the allegations were added mid-trial, respondent was afforded weeks to consider the

new allegations because the trial was adjourned after the court amended the petition. Given all of these circumstances, the trial court did not abuse its discretion in permitting the amendment.

Lastly, the trial court did not clearly err in determining that the statutory grounds for termination were established by clear and convincing evidence. Pursuant to MCL 712A.19b(3)(g), the evidence established that respondent murdered another young child. Although respondent offered his own explanation of the events, the court's findings were based on its credibility determinations. This Court defers to the trial court's special opportunity to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). In addition, respondent's treatment of another child was indicative of how he would treat his own children. *In re Foster*, 285 Mich App 630, 631; 776 NW2d 415 (2009). The evidence also established that respondent engaged in domestic violence. Accordingly, the trial court did not clearly err in determining that there was clear and convincing evidence supporting termination pursuant to MCL 712A.19b(3)(g). For the same reasons, the trial court also did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(j), as there was a reasonable likelihood, based on respondent's conduct, that the children would be harmed if placed in his care.

Respondent next argues that the trial court erred in finding that termination of his parental rights was in his children's best interests. We disagree. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child[ren]'s best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child[ren] must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. This Court reviews the court's determination regarding the children's best interests for clear error. *In re Olive/Metts*, 297 Mich App at 40. "In deciding whether termination is in the child[ren]'s best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* at 41-42 (internal citations omitted).

The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests in light of the serious safety concerns. The evidence established that respondent murdered another child. The doctor who treated the child characterized the injuries as the worse she had ever seen. The child suffered a brain injury, fractured rib, a lacerated liver and pancreas, and contusions involving internal organs. The child had incurred multiple blunt force trauma and sustained multiple "blows" to her body. The Children's Protective Services worker opined that termination of respondent's parental rights was in the best interests of both children due to the seriousness of the situation. The evidence also established that respondent had violent tendencies. Given these circumstances, a preponderance of evidence established that termination of respondent's parental rights was in his children's best interests. Therefore, the trial court did not clearly err in terminating respondent father's parental rights.

Affirmed.

/s/ Michael J. Riordan
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood